

Filed for intro on 02/16/95  
House Bill \_\_\_\_\_  
By \_\_\_\_\_

Senate No. SB1621  
By Wilder

AN ACT to establish a corporation to issue debt for businesses in  
Tennessee.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Short Title. This chapter shall be known and may be cited as the  
"Tennessee Industrial Finance Corporation Act".

SECTION 2. Legislative Intent and Findings; Purposes of Chapter; Construction. It is  
hereby found and declared by the general assembly that:

(a) There is a need to enhance economic activity in the municipalities of this state  
by attracting manufacturing, development, agribusiness, export trade, business enterprise  
management, and other activities conducive to economic promotion in order to provide a  
stronger, more balanced, and stable economy in the municipalities of the state.

(b) A significant portion of businesses located in the municipalities of the state or  
desiring to locate in the municipalities of the state encounter difficulty in obtaining financing  
on terms competitive with those available to businesses located in other states or are  
unable to obtain such financing at all.

(c) The difficulty in obtaining such financing impairs the expansion of economic activity and the creation of jobs and income in municipalities throughout the state.

(d) The businesses most often affected by these financing difficulties are small businesses critical to the economic development of the municipalities of this state.

(e) The economic well-being of the people in, and the commercial and industrial resources of, the municipalities of this state would be enhanced by the provision of financing to businesses on terms competitive with those available in the most developed financial markets worldwide.

(f) In order to improve the prosperity and welfare of the municipalities of this state and its inhabitants, to improve and promote the financing of projects related to the economic development of the municipalities of this state, and to increase the purchasing power and opportunities for gainful employment of citizens of the municipalities of this state, it is necessary and in the public interest to facilitate the financing of such projects as provided for in this Act and to do so without regard to the boundaries between municipalities, special districts, and other local governmental bodies or agencies in order to more effectively and efficiently serve the interests of the greatest number of people in the widest area practicable.

(g) In order to promote and stimulate development and advance the business prosperity and economic welfare of the municipalities of this state and its inhabitants including the encouragement of minority participation therein; to encourage and assist new business and industry in this state through loans, investments, or other business transactions; to rehabilitate and assist existing businesses; to stimulate and assist in the expansion of all kinds of business activity; and to create maximum opportunities for employment, encouragement of thrift, and improvement of the standard of living of the citizens of Tennessee, it is necessary and in the public interest to facilitate the cooperation

and action between organizations, public and private, in the promotion, development, and conduct of all kinds of business activity in this state.

(h) In order to efficiently and effectively achieve the purposes of this Act, it is necessary and in the public interest to create a special industrial finance corporation to act in the promotion and advancement of projects related to economic development throughout this state, such corporation to conduct its business as a joint effort of the public and private sectors.

(l) The purposes to be achieved by the special industrial finance corporation through such projects and such financing of business and industry in compliance with the criteria and the requirements of this Act are predominantly the public purposes stated in this section, and such purposes implement the governmental purposes under the State Constitution of providing for the health, safety, and welfare of the citizens of the state.

(j) This chapter shall be liberally construed in conformity with such intention.

SECTION 3. Definitions. As used in this chapter, unless the context otherwise requires:

(a) "Act" means the Tennessee Industrial Finance Corporation Act, and all acts supplemental thereto and amendatory thereof.

(b) "Amortization payments" means periodic payments, such as monthly, semiannually, or annually, of interest (at a fixed or variable rate) on, premiums, if any, and installments of principal of bonds as required by an indenture of the Corporation.

(c) "Applicant" means the individual, firm, or corporation, whether for profit or nonprofit, charged with developing the project under the terms of an indenture of the Corporation.

(d) "Bonds" means bonds, notes, interim certificates or other obligations of the Corporation issued pursuant to this chapter.

(e) "Corporation" means the Tennessee Industrial Finance Corporation organized pursuant to the provisions of this chapter.

(f) "Financial institution" means any banking corporation or trust company, savings and loan association, insurance company or related corporation, partnership, foundation or other institution engaged primarily in lending or investing funds in this state.

(g) "Municipality" means any county or incorporated city or town in this State.

(h) "Project" means all or any part of, or any interest in, any land, building, facility or other improvement thereon, and all real and personal properties, including working capital and the acquisition of accounts to finance working capital, deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for or necessary to the operation of any one or more of the following: manufacturing, producing, processing, research, development, assembling, repairing, extracting, environmental operations, value added services, warehousing, distributing, or transporting any products or services of industry, commercial business enterprise or agribusiness, and that involve the creation of new or additional employment or the retention of existing employment, and such other facilities and activities thereon that are consistent with and that implement the purposes and intent of this Act.

#### SECTION 4. Creation of Corporation.

There is hereby created a body, politic and corporate, to be known as the "Tennessee Industrial Finance Corporation". The corporation, a political subdivision and instrumentality of the state, shall be deemed to be acting in all respects for the benefit of the people of the state in the performance of essential public functions and shall be deemed to be serving a public purpose and improving and otherwise promoting health, welfare, and prosperity, and that the Tennessee Industrial Finance Corporation shall be empowered to act on behalf of the State of Tennessee and its people in serving this public purpose for the benefit of the general public.

#### SECTION 5. Board of Directors.

(a) The Corporation shall have a board of directors consisting of seven (7) members. The Commissioner of Economic and Community Development, and such

commissioner's successors in office, by virtue of the incumbency of such commissioner's office, and without further appointment or qualification, shall be a director of the Corporation. Tennessee Tomorrow, Inc. shall nominate persons to fill the positions of the remaining six (6) directors, who shall be appointed from such list of nominees in accordance with the following provisions. The Governor shall appoint four (4) board of directors of the Corporation who shall be persons with backgrounds in banking and financial matters. The speaker of the senate and the speaker of the house of representatives shall each appoint one (1) director. The terms of office for the directors shall be for four (4) years, except that six (6) of the initial directors, in groups of two (2) each, shall be designated to serve terms of one (1), two (2), and three (3) years, respectively, from the date of their appointment, and all other directors shall be designated to serve terms of four (4) years from the date of their appointment. A vacancy occurring during a term shall be filled for the unexpired term. A director shall be eligible for reappointment.

(b) A director shall receive no compensation for such director's services, but is entitled to the necessary expenses, including travel expenses, incurred in the discharge of such director's duties. Each director shall hold office until such director's successor has been appointed.

(c) The powers of the Corporation shall be exercised by the directors thereof.

#### SECTION 6. Powers of the Corporation.

(a) The powers of the Corporation shall include all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Act.

(b) The Corporation is authorized and empowered to:

(i) Have perpetual succession as a public nonprofit corporation and adopt bylaws for the regulation of its affairs and the conduct of its business.

(ii) Adopt an official seal and alter the same at its pleasure.

(iii) Maintain an office at such place or places as it may designate.

(iv) Sue and be sued in its own name and plead and be impleaded.

(v) Issue, from time to time, its bonds for the purpose of financing and refinancing one (1) or more projects which may be located in one (1) or more municipalities in the state of Tennessee, for one (1) or more applicants, and exercise all powers in connection with the authorization, issuance, and sale of bonds, subject to the provisions of Section 7.

(vi) Make and execute contracts and other instruments necessary or convenient to the exercise of its powers under the Act, including contracts and other instruments with the state, political subdivisions thereof, and other governments.

(vii) Lease, acquire, construct, sell and otherwise deal in and contract concerning any projects.

(viii) Make secured or unsecured loans to, or to guarantee the payment of loans made to, businesses for the purpose of financing the exports of goods to foreign countries.

(ix) Disseminate information about itself and its activities.

(x) Acquire, by purchase, lease, option, gift, grant, bequest, devise, or otherwise, real or personal property for its administrative purposes, together with any improvements thereon.

(xi) Hold, improve, clear, or prepare for development any such property.

(xii) Mortgage, pledge, hypothecate, or otherwise encumber or dispose of any real or personal property, and sell or transfer such interests in real or personal property.

(xiii) Insure or provide for insurance of any real or personal property or operations of the Corporation or any private enterprise against any risks or hazards, including the power to pay premiums on any such insurance.

(xiv) Establish and fund a guaranty fund.

(xv) Invest any funds held by the Corporation, and not required for immediate disbursement, in property or securities in such manner as the board shall determine, subject to the authorizing resolution on any bonds issued, and redeem such bonds at the redemption price established therein or purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled.

(xvi) Borrow money and apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the Federal Government or the state, county, or other public body or from any sources, public or private, for the purposes of this Act and give such security as may be required and enter into and carry out contracts or agreements in connection therewith; and include in any contract for financial assistance with the Federal Government for, or with respect to, any purposes under this Act and related activities such conditions imposed pursuant to federal laws as the board of directors deems reasonable and appropriate which are not inconsistent with the provisions of this Act.

(xvii) Make or have all surveys and plans necessary for the carrying out of the purposes of this Act, contract with any person, public or private, in making and carrying out such plans, and adopt, approve, modify, and amend such plans.

(xviii) Develop, test, and report methods and techniques and carry out demonstrations and other activities for the promotion of any of the purposes of this Act.

(xix) Apply for, accept, and utilize grants from the Federal Government available for any of the purposes of this Act.

(xx) Make expenditures necessary to carry out the purposes of this Act.

(xxi) Create subsidiary nonprofit or for profit corporations, which shall have such purposes and powers as the board of directors shall determine, to assist in

carrying out the purposes of the Corporation as provided herein, and to provide technical, administrative and financial assistance to such subsidiary corporations.

(xxii) Select, retain, and dismiss employees and set levels of compensation.

(xxiii) Exercise all or any part or combination of powers granted in this Act.

(c) Any meeting held by the board of directors for any purposes, except as provided in Section 8(e) herein, whatsoever shall be open to the public.

#### SECTION 7. Issuance of Bonds.

(a) The Corporation has power in its corporate capacity, in its discretion, to issue bonds or other evidences of indebtedness from time to time to finance the undertaking of any purpose of this Act, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans or preliminary loans, and has the power to issue refunding bonds for the payment or retirement of bonds previously issued. Bonds issued pursuant to this section shall bear the name "Tennessee Industrial Finance Corporation Revenue Bonds". The security for such bonds may be based upon such revenues as are legally available. In anticipation of the sale of such revenue bonds, the Corporation may issue bond anticipation notes and may renew such notes from time to time. Such notes shall be paid from any revenues of the Corporation available therefor and not otherwise pledged or from the proceeds of sale of the revenue bonds in anticipation of which they were issued. Any bond, note, or other form of indebtedness issued pursuant to this Act shall mature no later than the end of the fortieth (40th) fiscal year after the fiscal year in which the bond was issued.

(b) The Corporation is hereby declared to be performing a public function in behalf of the state and to be a public instrumentality of the state. Accordingly, the Corporation and all properties at any time owned by it, and the income and revenues therefrom, and all bonds issued by it, and the income therefrom, shall be exempt from all taxation in the state



of Tennessee. Also for purposes of the Securities Act of 1980, compiled as Title 48, Chapter 2, Part 1, and any amendment thereto or substitution therefor, bonds issued by the Corporation shall be deemed to be securities issued by a public instrumentality or a political subdivision of the state of Tennessee.

(c) Bonds issued under this section shall be authorized by the Corporation; may be issued in one (1) or more series; and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest rate or rates, be in such denomination or denominations, be in such form either with or without coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payments at such place or places, be subject to such terms of redemption, with or without premium, be secured in such manner, and have such other characteristics as may be set forth in the proceedings of the board of directors of the Corporation under which the bonds shall be issued. Bonds issued under this section may be sold in such manner, either at public or private sale, and for such price as the board of directors may determine will effectuate the purposes of this Act.

(d) In case a director whose signature appears on any bonds or coupons issued under this Act ceases to be a director before the delivery of such bonds, such signature is, nevertheless, valid and sufficient for all purposes, the same as if such director had remained in office until such delivery.

#### SECTION 8. Guaranty of Bond Issues.

(a) The Corporation is hereby authorized to approve or deny, by a majority vote of the board of directors, the guaranty of any revenue bonds issued pursuant to this Act.

(b) Any Applicant for financing from the Corporation requesting a guaranty of the bonds issued by the Corporation under this Act must submit a guaranty application, in a form acceptable to the Corporation, together with supporting documentation to the Corporation as provided in this section.

(c) The Corporation shall charge a premium payment to all Applicants requesting a guaranty in an amount and payable at such times as shall be determined by the board of directors.

(d) All applications for a guaranty must be accompanied by documentation providing that loans be secured by a first mortgage on the property financed, and that the financing include a personal guarantee by the principal owner of the business being financed.

(e) All applications and supporting documents, including personal financial records, trade secrets, or proprietary information of Applicants, and all staff and board of directors meetings or portions thereof conducted for the purpose of reviewing such applications shall be confidential and exempt from the provisions of Title 8, Chapter 44, Tennessee Code Annotated.

(f) If the application for a guaranty is approved by the Corporation, the Corporation and the Applicant shall enter into a guaranty agreement. In accordance with the provisions of the guaranty agreement, the Corporation guarantees to use the funds on deposit in its guaranty fund to meet amortization payments on the bonds as they become due, in the event and to the extent that the Applicant is unable to meet such payments in accordance with the terms of the indenture when called to do so by the trustee of the bondholders. Whenever the Corporation, acting under the terms of the guaranty agreement, deems it necessary to assume the obligation of maintenance of any Project financed with bond proceeds, the Corporation may use funds on deposit in its guaranty fund to pay insurance and maintenance costs required for the preservation of the Project and to protect the guaranty fund from loss, or to minimize losses, in such manner as deemed necessary and advisable by the Corporation.

(g) In the event the Corporation does not approve the application for a guaranty, the Applicant shall be notified in writing of the Corporation's determination that the application not be approved.

(h) The board of directors of the Corporation is authorized and directed to conduct such investigation as it may deem necessary for promulgation of regulations to govern the operation of the guaranty program authorized by this section. The regulations may include such other additional provisions, restrictions, and conditions as the Corporation, after its investigation referred to in this subsection, shall determine to be proper to achieve the most effective utilization of the guaranty program. This may include, without limitation, a detailing of the remedies that must be exhausted by the bondholders, or a trustee acting on their behalf, prior to calling upon the Corporation to perform under its guaranty agreement and the subrogation of other rights of the Corporation with reference to the project and its operation or the financing in the event the Corporation makes payment pursuant to the applicable guaranty agreement. The regulations promulgated by the Corporation to govern the operation of the guaranty program shall contain specific provisions with respect to the rights of the Corporation to enter, take over, and manage all financed properties upon default. These regulations shall set forth the respective rights of the Corporation and the bondholders in regard thereto.

SECTION 9. Bonds as Legal Investments. All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking and investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to such parties or within such parties' control in any bonds or other obligations issued by the Corporation. Such bonds and obligations shall be authorized security for all public deposits. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

SECTION 10. Provisions Cumulative. Neither this chapter nor anything herein contained shall be construed as a restriction or limitation upon any powers which the Corporation might otherwise have under any laws of this state, but shall be construed as cumulative of any such powers. No proceedings, notice or approval shall be required for the organization of the Corporation or the issuance of any bonds or any instrument as security therefor, except as herein provided, any other law to the contrary notwithstanding; provided, that nothing herein shall be construed to deprive the state and its governmental subdivisions of their respective police powers over properties of the Corporation, or to impair any power therefor of any official or agency of the state and its governmental subdivisions which may be otherwise provided by law.

SECTION 11. Powers Supplementary. The powers conferred by this chapter shall be in addition and supplementary to, and the limitations of this chapter shall not affect the powers conferred by any other general, special or local law. Projects may be acquired, purchased, constructed, reconstructed, improved, bettered and extended and bonds may be issued under this chapter for such purposes, notwithstanding that any other general, special or local law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment and extension of a like project, or the issuance of bonds for like purposes, and without regard to the requirements, restrictions, limitations or other provisions contained in any other general, special or local law. If any one (1) or more sections or provisions of this chapter, or the application thereof to any person or circumstance, shall ever be held by any court of competent jurisdiction to be invalid, the remaining provisions of this chapter and the application thereof to persons or circumstances other than those to which it is held to be invalid, shall not be affected thereby, it being the intention of this General Assembly to enact the remaining provisions of this chapter, notwithstanding such invalidity.

SECTION 12. No State Liability.

(a) (1) Obligations issued under the provisions of this Act shall not be deemed to constitute a debt, liability or obligation of the state or of any other political subdivision

thereof, nor a pledge of the full faith and credit of the state or any other political subdivision, but shall be payable solely from the revenues or assets of the Corporation.

(2) Each obligation issued under this Act shall contain on the face thereof a statement to the effect that the Corporation shall not be obligated to pay the same, nor the interest thereon, except from the revenues or assets pledged therefor and that neither the full faith and credit, nor the taxing power of the state, or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such obligation.

(3) All obligations of the Corporation issued under the provisions of this Act are revenue bonds or notes and are not general obligations of the State of Tennessee.

(b) Expenses incurred by the Corporation in carrying out the provisions of this Act may be made payable from funds provided pursuant to this Act, and no liability is incurred by the Corporation hereunder beyond the extent to which moneys have been so provided.

#### SECTION 13. Prohibition on Personal Interests in Contracts.

(a) No officer or employee of the Corporation for purpose of personal gain shall have or attempt to have, directly or indirectly, any interest in any contract or agreement of the Corporation in connection with the sale or purchase of any bonds or investments of the Corporation. The General Assembly finds and declares, in furtherance of the public purposes set forth in Section 2, that it shall not be deemed a violation of the provisions of this section if any member of the board of directors, or any firm owned by a member or by which a member is employed, shall participate in any program of the Corporation provided that such participation shall be on the same terms and subject to the same conditions governing all other participants in the program.

(b) Any member, director, officer, employee, or agent of the Corporation who shall be found guilty of violating the provisions of this section shall be barred from public

employment in the state in any capacity whatsoever for a period of five (5) years from the date such person was adjudged guilty of such misdemeanor, in addition to such other penalties as may be provided by law.

SECTION 14. Dissolution, Disposition of Property. Whenever the board of directors of the Corporation shall by resolution determine that there has been substantial compliance with the purposes for which the Corporation was formed and all bonds theretofore issued and all obligations theretofore incurred by the Corporation have been fully paid and all remaining reserves of the Corporation have been repaid to the funding sources thereof, the then members of the board of directors of the Corporation shall thereupon execute and file for record in the office of the secretary of state a certificate of dissolution reciting such facts and declaring the Corporation to be dissolved. Such certificate of dissolution shall be executed under the corporate seal of the Corporation. Upon the filing of such certificate of dissolution, the Corporation shall stand dissolved, the title to all funds and properties owned by it at the time of such dissolution shall vest in the State, and possession of such funds and properties shall forthwith be delivered to the State.

SECTION 15. Effective Date. This Act shall take effect upon becoming law, the public welfare requiring it.

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